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on services of general interest
(2005/2101(INI))

Committee on Economic and Monetary Affairs

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(*) Enhanced cooperation between committees – Rule 47 of the Rules of Procedure

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on services of general interest (2005/2101(INI))

The European Parliament,

- having regard to the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled ‘White Paper on services of general interest’ (COM(2004)0374),
- having regard to the communication from the Commission entitled ‘Implementing the Community Lisbon programme: Social services of general interest in the European Union’ (COM(2006)0177),
- having regard to Article 36 of the Charter of Fundamental Rights of the European Union on access to services of general economic interest,
- having regard to Articles 2, 5, 16, 73, 86, 87, 88 and 295 of the EC Treaty,
- having regard to Articles I-3, I-5 and III-122 of the Treaty establishing a Constitution for Europe,
- having regard to its previous resolutions on services of general interest, particularly its resolution of 13 November 2001 on the Commission communication ‘Services of General Interest in Europe’ (COM(2000) 580)¹, its resolution of 14 January 2004 on the Commission green paper on services of general interest (COM(2003)0270)² and its resolution of 22 February 2005 on State aid in the form of public service compensation³,
- having regard to its legislative resolution on the proposal for a directive of the European Parliament and of the Council on services in the internal market (COM(2004)0002)⁴,
- having regard to the Presidency conclusions of the Lisbon European Council of 15 and 16 March 2000, of the Nice European Council of 7, 8 and 9 December 2000, of the Laeken European Council of 14 and 15 December 2001 and of the Barcelona European Council of 15 and 16 March 2002 on services of general interest,
- having regard to the case-law of the European Court of Justice in the area of services of general interest, particularly the Teckal judgment of 18 November 1999⁵, the Chronopost judgment of 3 July 2003⁶, the Altmark judgment of 24 July 2003⁷, the Stadt Halle

¹ OJ C 140 E, 13.6.2002, p. 153.

² OJ C 92 E, 16.4.2004, p. 294.

³ OJ C 304 E, 1.12.2005, p. 117.

⁴ Texts adopted, P6_TA(2006)0061.

⁵ Case C-107/98, Teckal Srl/Comune di Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia [1999], I-8121.

⁶ Joined Cases C-83/01 P, C-93/01 P and C-94/01 P, Chronopost and Others, [2003], I-6993.

⁷ Case C-280/00, Altmark Trans GmbH, Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH [2003], I-7747.

judgment of 11 January 2005¹ and the judgment of 13 January 2005²,

- having regard to rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Internal Market and Consumer Protection, the Committee on Culture and Education, the Committee on Legal Affairs, the Committee on Employment and Social Affairs, the Committee on Transport and Tourism, the Committee on International Trade, the Committee on Industry, Research and Energy, and Committee on Regional Development (A6-0000/2006),
- A. whereas the following three principles stand as terms of reference for European integration:
- solidarity, bringing people together based on the objectives of social, economic and territorial cohesion,
 - cooperation, enabling the realisation of the transnational and European aspirations in the EU Treaties and programmes, and
 - competition, enabling the completion of the EU internal market on the basis of social market economy rules and governed by competition law, which is an essential area of democratic law that aims not only to keep the power of the State in check, but also, and above all, to curb the abuse of economic power and to guarantee legal protection for consumers,
- B. whereas services of general interest constitute one of the areas in which the tension between these three principles is currently exerting the greatest pressure and in which the need for policy measures and legislation is most keenly felt,
- C. whereas the availability of efficient services of general interest is an integral part of the economic, societal and social systems of all Member States and of the European social model, whereas this availability varies considerably from Member State to Member State and whereas the objective of successfully completing the EU internal market must encourage support for the introduction of effective and efficient services of general interest for all,
- D. whereas, taking into account the principle of subsidiarity pursuant to Article 5(2) of the EC Treaty, it is for the Member States and their local authorities to decide which services are of general interest and what is the appropriate method of management,
- E. whereas, in the matter of compatibility between internal market and competition rules and the smooth operation of services of general interest, more legal certainty must be created in order to guarantee the competence of national, regional and local authorities for the provision of services of general interest,
- F. whereas sectoral EU directives on services of general interest in network industries and other sectors in which market opening has been achieved or begun provide a reliable framework, but they do not, however, offer sufficient legal certainty for all areas of services of general interest,

¹ Case C-26/03, Stadt Halle and RPL Lochau v Arbeitsgemeinschaft Thermische Restabfall- und Energieverwertungsanlage TREA Leuna, [2005], I-1.

² Case C-84/03, Commission/Spain [2005], I-139.

- G. whereas the multitude of sector-specific initiatives relating to the opening of the internal market in the area of services of general interest and the Commission proposals for a services directive¹ create confusion and contain conceptual contradictions that give rise to legal disputes and legal proceedings,
- H. whereas, while Article 16 and Article 86(2) of the EC Treaty refer to services of general economic interest, the Treaty offers no definition thereof, whereas services of general interest are not mentioned at all in the EC Treaty but were introduced only by the Commission in a communication and whereas, pursuant to the European Parliament legislative resolution of 16 February 2006, services of general economic interest are exempt from the scope of Article 16 of the EC Treaty and services of general interest are completely exempt from the directive, although a clear distinction is not possible in the absence of a definition,
- I. whereas the different forms of administration and partnership between economic operators carrying out these services are being encouraged more strongly than ever, and whereas this should occur in compliance with the responsibilities of the Member States regarding the provision and procurement of those services in the interests of effective and high-quality services in the future,
- J. whereas the Community objective of a high level of consumer protection should be brought into sharper focus by ensuring that the right to information and the right of complaint enjoyed by recipients of services of general economic interest are reinforced, that their economic interests are duly respected and that their right to effective legal remedy in the event of a breach of these rights is recognised,
1. Considers that its previous resolutions on services of general interest of 13 November 2001, 14 January 2004 and of 22 February 2005 are still relevant;
 2. Emphasises that services of general economic interest are supplied in a European internal market and are therefore subject to European internal market, public procurement, competition and State aid legislation;
 3. Recommends that, regarding services of general interest, a distinction be made between, on the one hand, market services mainly financed by the user, defined by the EC Treaty as services of general economic interest and subject to rules on public service obligations or universal services, and, on the other hand, non-market services mainly financed by public funds and defined as services of general interest of a non-economic nature;
 4. Regrets the fact that the rules in force in this area are defined by the case-law of the Court of Justice and by the Commission's interpretation of individual cases;
 5. Is therefore of the opinion that, in the interests of:
 - local, regional and national authorities, in order that they might provide and guarantee appropriate services in the interests of all citizens within a clearly defined framework of competition and internal market rules,
 - the (public, profit-making or non-profit-making) companies that provide or offer these services, in order that they might be aware what conditions and obligations can be imposed on them by the authorities under the legislation in force for vital reasons of the general interest, and

¹ Commission Proposal of 25 February 2004 for a Directive of the European Parliament and of the Council on services in the internal market (COM(2004)0002). Amended by the proposal of 4 April 2006 (COM(2006)0160).

- service users, in order that they might be certain that the services offered will be carried out subject to proper conditions on accessibility, quality, affordability etc., greater legal certainty must be created through a legal framework intended to define common concepts and principles;
6. Emphasises that existing sector-specific Community rules in this area should not be called into question and that the need for sector-specific rules must be respected;
 7. Calls on the Commission to create more legal certainty in the area of social and health care services and to come forward with proposals to this end;
 8. Recommends that, when a competent authority intends to define the supply of a service of general economic interest, the authority in question pass a suitable legal act clearly defining in advance and laying down the public service obligations to which the supplier of the service must adhere;
 9. Recommends that, when a competent authority intends to finance services of general economic interest other than through direct funding from its general budget, the authority in question should choose one of the following forms of funding, in compliance with the provisions of the EC Treaty, particularly of Article 86(2): granting exclusive and special rights, granting compensation for the supply of public services, setting up a fund for the supply of public services, creating a single-tariff system;
 10. Recommends that, when a competent authority intends to grant compensation for the supply of public services in order to ensure the funding of a service of general interest, this compensation should not be considered State aid in the meaning of Article 87 of the EC Treaty, provided that:
 - the principle or formula used to calculate the compensatory payments are defined by means of an objective and transparent procedure, and
 - the level of compensation complies with principle of covering costs;
 11. Emphasises, again in this connection, that Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest¹ must be implemented clearly;
 12. Emphasises that it is for the competent authority to decide whether to supply a service of general interest directly or to entrust supply thereof to external service providers;
 13. Is of the opinion that outsourcing the supply of a service of general interest imposes on the authority in question the obligation to assign the service on the basis of a public service contract; this principle should, however, allow the competent authority the opportunity to transfer a public service contract in emergencies, where there is little impact on trade between Member States or the particular characteristics of specific services of general economic interest directly without such a procedure to an operator of its choice; the Commission, together with the Member States and Parliament, should define this exception and the relevant criteria, analogous to the ‘Altmark criteria’, in the form of a regulation;
 14. Calls in this connection, and in the interests of possible improvements in efficiency through the involvement of new operators and ways of providing services of general interest, for more legal certainty as a matter of urgency as regards the different forms of

¹ OJ L 312, 29.11.2005, p. 67.

- inter-authority organisations (cooperation between local authorities, self-supply in the context of the in-house award of contracts, public-private partnership, awarding of concessions), a clarification of European law on competition, on the award of contracts and on State aid, and of the general criteria applicable throughout Europe;
15. Is of the opinion that the competent authority should see to it that in the sectors in which it has laid down rules for public universal service obligations or particular objectives, the types of regulation and instruments appropriate to each sector should be applied on the basis of transparent rules;
 16. Is also of the opinion that regulatory instruments must, in the interests of transparency and consumer protection, provide for rules to be passed in the following areas:
 - defining the procedures for access to existing networks where access is necessary for the provision of services;
 - defining the price and/or tariff conditions for the supply of services;
 - rules on out-of-court settlements between the supplier of services and the user, regardless of the possibility of legal action; and
 - consultation of and, as appropriate, referral to the competition authorities regarding any element that might point to a breach of the national competition rules or of those laid down in the EC Treaty;
 17. Recommends, in the interests of high-quality and efficient services of general interest, that objective and transparent quality standards be laid down on a voluntary basis in order to guarantee fulfilment of public service obligations, of a universal service or of specific objectives imposed on the supplier and/or provider of a service of general interest; when defining such quality standards, the following points should be taken into account:
 - protection and safety of service users,
 - appropriateness and proportionality of the standard in relation to the cost of the service,
 - the widest possible dissemination and publication of the standard and
 - simple and effective monitoring of adherence to the standard, which could be laid down on the basis of a charter or of a code of conduct;
 18. Calls on the Commission, on the basis of its resolution of 14 January 2004, its resolution of 9 March 2005 on the mid-term review of the Lisbon strategy¹, its resolution of 15 March 2006 on the input to the Spring 2006 European Council in relation to the Lisbon Strategy² and the present resolution, to come forward with an appropriate legal framework;
 19. Instructs its President to forward this resolution to the Council and the Commission.

¹ OJ C 320 E, 15.12.2005, p. 164.

² Texts adopted, P6_TA(2006)0092.

EXPLANATORY STATEMENT

The importance of public services

Access to high-quality public services is a key political issue. Good schools and hospitals, clean water, safe and reliable transport and energy, for example, figure in most definitions of a good quality of life.

However, public services are not only an essential element in the quality of life of individual citizens. They have a key role to play in the EU's flagship Lisbon strategy, which aims to build on the strengths of Europe's social and economic model to create the world's most dynamic, cohesive and sustainable economy. Good public services can help to overcome economic stagnation, social exclusion and isolation; strengthen social and territorial cohesion; and improve the functioning of Europe's internal market and its external competitiveness.

High-quality public services - open and transparent, with equal access for all - are therefore essential elements in the European model of society. Market forces alone cannot respond always to the dynamic nature of public services. That is why public authorities at every level are deeply involved in providing, regulating, organising or - to various degrees - financing or supporting such services. It is not the EU's job to interfere in the provision of such services - instead, in the view of the rapporteur, the EU should create more legal certainty which allows public authorities at every level to do their job of safeguarding the public interest in provision of these services. And the EU has also a role to play in guaranteeing adequate standards across the European Union, making good, efficient and high-qualified public services a tangible expression of European citizenship.

What are public services?

Different people mean different things by 'public services'. Some people think of public services as being those provided, or financed, by the public sector. For others, the key criterion is whether they are provided 'in the public interest' ... and in this complicated debate, many other definitions have been offered.

In the view of the rapporteur, it is necessary to start to clarify the different concepts of public services and to distinguish between services of general interest which are, on the one hand those of a commercial nature and mainly financed by the user, which the EC Treaty qualifies as services of general economic interest (SGEI) in line with Article 16 of the EU Treaty, and, on the other hand, those which are not of a commercial nature and are financed mainly by public or social funds, which may be regarded as services of non-economic general interest (SNEGI), such as services of general interest exercising exclusively social functions or prerogatives of public authorities.

The idea behind Article 16 is to single out those services which could significantly affect the operation of the single market, because they are economic in character, from non-economic services which do not. Non-economic services, including for example police and the administration of justice, are seen as matters wholly for national and sub-national government, for which the EU has no competence. Unfortunately, current EU law gives no

clear guidance on how to distinguish between services of general economic interest, services of general interest and other services – which means that it is not clear, in individual cases, whether and to what extent EU rules on the single market apply. The rapporteur would therefore like to start a debate of possible clarification in this context.

Respecting different national traditions

Throughout Europe, good public services are seen as an essential element in a civilised society. But national traditions - what is provided, how and by whom - vary greatly, creating misunderstandings and confusion about what exactly is meant by public services and a reluctance even to attempt to develop common European criteria and guidelines.

National, regional and local authorities are attached to their autonomy to define their policies for their citizens in their own way. But in practice they are often confronted with interference by the European Commission or by the European Court of Justice, which have judged their activities from the perspective of the EU's internal market rules - for example, deeming cross-subsidisation to be contrary to State aid rules; imposing onerous public procurement obligations; or treating some public service obligations as barriers to the European single market.

In the view of the rapporteur, neither effective safeguards for local autonomy, nor the legal certainty which public service providers, public authorities, private businesses and service users is for the moment guaranteed.

The aim to develop more legal certainty must be to clarify the situation, in order to safeguard local autonomy, and the principle of subsidiarity, by defining the relationship between - on one hand - single market rules and - on the other - the pursuit of public interest objectives in the provision of those services of general interest which do have a significant economic dimension and could affect the operation of the single market.

Confusion and uncertainty in current laws

Although the proposed Constitutional Treaty, once ratified, would provide constitutional safeguards for services of general interest, detailed legislation - accumulated over many years - leaves great practical uncertainty, because the Treaty sets out only the most general principles governing public services, whereas there is a detailed body of EU legislation interpreting and implementing its single market provisions.

It is not clear to what extent services of general interest or general economic interest are covered - for instance - by competition law, single market legislation, or rules designed to regulate subsidies or open up public procurement. The law evolves through the - often unpredictable - twists and turns of the Commission or European Court of Justice. And the liberalisation of various public services networks over the years - such as telecom, post, energy and rail - has been based each time on different rules, adding to the legal complexity and uncertainty. Moreover, the financing and management of public services in Europe depend on the unpredictable development of case law and judicial interpretation.

The Commission's recent Green and White Papers on Services of General Interest, and the new Communication on Social Services of General Interest, have disappointed those who

hoped for a new, surer legal situation for public services: the Commission documents give no more legal certainty on all mentioned aspects. Moreover, proposals towards a service directive are putting forward new questions regarding future conditions for dynamic public services.

Call for Action: greater legal certainty for public services

To safeguard services of general interest and put an end to legal uncertainty, Europe needs - without delay, and in parallel to current work on the broader Services Directive - a general legal framework for public services, complementary to existing sectoral and national provisions, and introduced on the basis of joint decision-making with the European Parliament.

The new legal framework must:

- clarify the division of responsibilities between the EU and Member States
- introduce criteria for a clear distinction between services of general ‘economic’ and ‘non-economic’ interest, to which different legal provisions apply
- enshrine the sovereignty of local authorities regarding the design and management of the public services for which they are responsible
- guarantee citizens’ right to a local input, ensuring that their needs, claims and problems are examined promptly and directly, and protecting consumer and civil rights
- respect the need for specific sectoral legislation for some services, and establish a clear relationship with such legislation, and with the Services Directive currently before the Parliament
- guarantee respect for the principles of transparency; openness; solidarity; a high quality of service; universality; equality of access; partnership with civil society; and workforce participation
- clarify the principles governing the funding and public procurement obligations of public services, in particular regarding different and new forms of provision and management in a dynamic public service sector.

The actual definition, formulation, organisation and funding of services of general interest, whether economic or non-economic, must remain a task for the Member States and their regional and local authorities. Subject to meeting the key standards and criteria set out above, the rapporteur envisage the widest variety of solutions for the provision of services at local level, responding to local needs.